LEGAL BRIEF

journal homepage: www.legal.isha.or.id/index.php/legal

Juridical Review of the Balance of Position of the Parties in the Micro Business Credit Agreement

Dhenandra Mahardika Sukmana

Universitas Bangka Belitung. Jl. Kampus Terpadu Balunijuk, Kecamatan Merawang, Kabupaten Bangka, Provinsi Kepulauan Bangka Belitung, 33172

E-mail: dhenandramahardika999@gmail.com

Abstract

Loans granted by banks need to be secured, without the presence of bank safeguards it is difficult to evade from arising as a result of debtor underachievement. Therefore banks bind debtors in micro business credit agreements based on the legal relationship between banks and credit. This research is to find out how micro business credit agreements have a balanced position for the parties. The method uses normative juridical research and the method used uses licensing (statute-approach) and analytical (analytic approach). The results obtained from this study are expected to provide a clear description and detailed, systematic and thorough legal review of the equilibrium position of the parties to the micro credit agreement.

Keywords: Principle of balance; Bank and consumer; Standard contract.

A. Instroduction

The increasing banking activity in the community, the percentage of banks in dealing with various kinds of problems is also increasing. In addition, the types of crimes that occur as a result of banking service activities by banks are increasingly complex. Therefore it has become an obligation for banks to bind their creditors with an agreement. This is intended so that the bank obtains legal force and guarantees of debt repayment from its debtors. In the banking world, such agreements are commonly referred to as banking credit agreements.[1]

Agreement or verbintenis itself implies a legal relationship between Wealth / property between two / more people, which gives strength to the right of one party to obtain an achievement and at the same time obliges the other party to give an achievement.[2]

According to CH. Gatot Wardoyo, in his writings on About the Clauses of a Bank Credit Agreement, the credit agreement serves as the principal agreement. That is, a credit agreement is something that determines whether or not another agreement that follows it, for example a binding agreement agreement. Credit agreements serve as evidence of the limitations of rights and obligations between creditors and debtors. Credit agreements function as a tool to monitor credit.[3]

The form and format of the loan agreement are fully submitted to the bank. But there are things that must still be followed, namely that the agreement must not be blurred or unclear, besides that the agreement must at least pay attention to the legality and requirements. This is intended to prevent the existence of invalidation of the agreement made (invalidity) so that when the legal act (the agreement) is not violated a statutory provision. Based on the description of the standard agreement, it can be seen that the standard agreement does not meet the legal requirements for an agreement, specifically the provisions regarding freedom of contract. The Law of the Republic of Indonesia Number 8

[1] M. Yahya Harahap, Segi-segi Hukum Perjanjian, Alumni, Bandung, 1996, hal 6.
[2] Ibid.
[3] CH. Gatot Wardoyo, Sekitar Kalusul-klausul Perjanjian Kredit Bank, Bank dan Manajemen, 1992, hal 64-69.

of 1999 concerning Consumer Protection provides a new nuance because this law regulates that business operators do not arbitrarily include standard clauses in offering goods and services. However, from the analysis of primary legal materials in the form of micro business credit agreements, clauses that are conflicting or not in accordance with the provisions of the standard clause are stipulated in Article 18 of Law Number 8 of 1999 concerning Consumer Protection. That is because some of the provisions in Article 18 are considered burdensome for the parties bank.[4]

Seeing the very importance of the balance between creditors and debtors in micro business credit agreements, the researchers tried to raise the theme "juridical review of the balance of the position of the parties in micro business credit agreements".

B. Research Methods

The type of research used in this legal research is juridical-normative. Juridical-normative research is a scientific procedure for finding truth based on scientific logic from the normative side whose object is the law itself.[5] The consideration used in determining this type of research is an analysis of the provisions in the people's business credit agreement whether there is a balance of the position of the RB as creditors and customers as debtors and can be assessed accordingly or in violation of applicable laws and regulations.

The method of approach used in this type of juridical-normative research is the statutory approach and the analytical approach. The statute-approach is used to examine whether the people's business credit in the form of a standard agreement can be assessed accordingly if the agreement is seen from the provisions in the Civil Code, especially book III, which forms the basis of the engagement between the parties, or is assessed with the provisions in Law Number 8 of 1999 concerning Consumer Protection, in particular Article 18 paragraph 1 regarding the provisions for the inclusion of a standard agreement.

C. Results and Discussion

1. Micro business credit agreement between the Bank and the Customer

Micro business credit agreement between the Bank and the customer is analyzed with the principle of balance as implied in article 1320 of the Civil Code. Article 1320 which reflects the principle of balance can be found in Article 1320 paragraph (1). According to Subekti, the agreed clause meant that the two subjects who stated the agreement must agree, agree or agree on the main points of the agreement entered into by the parties. Then it can be concluded that Article 1320 paragraph (1) implies that in a relationship made by the parties there is a balance of wills.[6]Then the provisions in Article 1338 that emphasize the principle of freedom of contract and the existence of good faith must emphasize that there must be a balance between the parties in the agreement.[7]While credit agreements between banks and customers are only made by the bank unilaterally. Thus the micro business credit agreement does not meet the principle of balance according to the provisions of the Civil Code. Furthermore, micro credit agreements are analyzed with the principle of balance according to Article 18 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection. That the enactment of the Consumer Protection Act, especially the provisions in Article 18 of the

[4] Ahmad Miru, Hukum Perlindungan Konsumen, Raja Grafindo Persada, Jakarta, 2004, hal 12.
[5]Dr. Johnny Ibrahim, **Teori&Metodologi Penelitian Hukum Normatif**, Bayumedia, Malang, 2011, hal 57.
[6] Subekti, **Hukum Perjanjian**, Intermasa, Jakarta, 2002, hal 17.
[7] Wibowo Turandy, **Asas-asas Perjanjian** (online), http://www.jurnalhukum.com/asas-asas-perjanjian, (19 September 2012)

Consumer Protection Act as a form of Government intervention on the principle of freedom of contract, in which the principle of freedom of contract is one barometer of the balance of the position of the parties. However, in the micro business credit agreement, several violations committed by banks were still found on the grounds that the provisions violated by the bank were considered burdensome for the bank. Thus the micro business credit agreement also does not meet the principle of balance according to the Consumer Protection Act.

2. The bank cannot be blamed completely

The bank cannot be fully blamed for the inclusion of standard clauses that violate the provisions of the Consumer Protection Act. There are a number of things that cause banking institutions to not be able to implement these laws, in the sense that if the provisions in Article 18 of the Consumer Protection Act are implemented, it will be very burdensome for the banking institutions. Noting these conditions, there is a problem as if the banking institution did not heed the positive law namely the Consumer Protection Act because the agreement made between the customer and the bank should be subject to the Consumer Protection Act.[8]

The nature of banks that have different characteristics from other industries is also explained through several principles and thoughts and legislation. This explanation is related to the reasons that are the basis of arguments by banks to cross the provisions in the Consumer Protection Act.[9]

Actually it can be understood, the purpose of the inclusion of a number of exoneration clauses in the credit agreement is intended as an attempt by banks to protect themselves from risks that may arise from lending activities. Because the funds channeled by banks to debtor customers mostly come from fund depositors, thus the bank also has a great responsibility to the interests of the general public.[10]The bank, in running its business, does not want to suffer losses due to debtor customers who are unable or unable to repay their debts. Bank credit agreements that contain a number of clauses that are "unreasonable" or unbalanced earlier, turned out to be less profitable for the banks themselves, because the existence of such clauses is actually exploited by naughty debtor customers by submitting a lawsuit to the court asking that the court cancel the bank credit agreement thus, because in its making there has been an "abuse of circumstances". Even though at the time of signing the bank credit agreement, the bank is in a strong position, on the contrary when the bank credit agreement is implemented, the bank becomes a weak party, because there is a possibility of a cause of repayment or repayment of credit problems. Meanwhile, credit settlement itself faces various obstacles, both in terms of legal and non-legal.[11]

3. Micro Business Credit Agreement with a Balanced Position for the Parties

Micro business credit agreements that have a balanced position for the parties are agreements that in addition to protecting the rights and obligations of the bank, also pay attention and protect the rights and obligations of the debtor customers. To protect the rights and obligations possessed by the debtor can be done by applying Article 18 paragraph (1) letters a, b, c, d, f and h, paragraph (2), and paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection, in addition, can also be carried out in accordance with the application of the Indonesian Banking Architecture (API), one of which includes efforts to protect and empower customers.

[8] Deggan Mauli Tobing, **Risiko Hukum yang Terjadi di dalam Perjanjian Kredit Bank dalam Kaitannya dengan Perlindungan Konsumen**, Skripsi Tidak Diterbitkan, Sumatera Utara, Fakultas Hukum Universitas Sumatera Utara, 2008, hal 59.
[9] Ibid., P. 60.
[10] Ibid.
[11] Rachmadi Usman, **Aspek-aspek Hukum Perbankan di Indonesia**, Gramedia Pustaka Utama, Jakarta, 2001, hal 277.

If the protection and legal certainty that has been given by the law and court decisions are not enough, if the public interest requires, then we can urge the authorities to take some of the "freedom of contract" and regulate it in the provisions of compelling laws. If it is felt to be taking too long then the banking sector in collaboration with the court and consumer institutions, or other bodies that are considered to represent the interests of credit-taking customers, can formulate together clauses that meet the needs of the parties and do not violate the element of propriety for the sake of legal certainty and at the same time an interpretation agreement must be made on the relevant clauses. Only thing to note is that these arrangements should be made by taking into account the system and the principles of applicable law. In addition, to reduce objections as mentioned above, the bank also needs to pay attention to: a). Give sufficient warning to prospective debtors of the existence and entry into force of important clauses in a credit agreement; b). Notification is made before or at the time of signing the credit agreement; c). Formulated in words and sentences that are easily understood by prospective debtors; d). Provide sufficient opportunities to prospective borrowers to find out the contents of the agreement. Give sufficient warning to prospective debtors of the existence and entry into force of important clauses in a credit agreement; b). Notification is made before or at the time of signing the credit agreement; c). Formulated in words and sentences that are easily understood by prospective debtors; d). Provide sufficient opportunities to prospective borrowers to find out the contents of the agreement. Give sufficient warning to prospective debtors of the existence and entry into force of important clauses in a credit agreement; b). Notification is made before or at the time of signing the credit agreement; c). Formulated in words and sentences that are easily understood by prospective debtors; d). Provide sufficient opportunities to prospective borrowers to find out the contents of the agreement.

4. Judges Can Take Attitudes

While there is no law as mentioned above, in order to reduce non-compliance with the implementation of the contents of an agreement by both parties, the judge can take the attitude: a). Act firmly against business actors who violate the provisions of the inclusion of standard clauses in Article 18 paragraph (1) letters a, b, c, d, f and h, paragraph (2) and paragraph (3) of Law Number 8 of 1999 concerning Consumer Protection; b). With regard to the application of Article 18 paragraph (1) letters e and g of Law Number 8 of 1999 concerning Consumer Protection, specifically for banks, the court should examine the good faith carried out by banks in carrying out their functions and business and is reasonable if such a bank is guaranteed business stability. Therefore, the court should equally consider the interests of banks that are located as financial institutions that work with public deposits entrusted to them. Naturally, the court is obliged to protect the interests of depositors and bank customers as part of the other monetary system and at the same time will affect the welfare of the community;[12]

[12] Ari Purwadi, **Perjanjian Baku sebagai Upaya Mengamankan Kredit Bank,** Majalah Hukum dan Pembangunan Nomor 1 Tahun XXV, Fakultas Hukum Universitas Indonesia, Jakarta, 1995, hal 63.

D. Conclusion

Micro business credit agreements between banks and customers do not meet the principle of balance as implied in Articles 1320 and 1338 of the Civil Code because this agreement is only made by one party. Furthermore, micro business credit agreements are analyzed based on the principle of balance according to Article 18 paragraph (1) of the Consumer Protection Act governing the inclusion of standard clauses. From the research described above, it can be concluded that micro business credit agreements also do not meet the principle of balance according to the Consumer Protection Act.

Micro business credit agreements that have a balanced position for the parties are agreements that in addition to protecting the rights and obligations of the bank, also pay attention and protect the rights and obligations of the debtor customers. To protect the rights and obligations possessed by the debtor can be done by applying Article 18 paragraph (1) letters a, b, c, d, f and h, paragraph (2), and paragraph (3) of Law Number 8 of 1999 concerning Consumer protection. Meanwhile, to protect the interests of the bank, the effort that can be carried out is by conducting a review of the provisions of Article 18 paragraph (1) letter e and g because the provisions in the article are considered burdensome to the bank.

Reference

Book

Azis, Sri Woelan. 1996. Aspek-aspek Hukum Ekonomi Pembangunan di - Indonesia. Surabaya: Citra Media.

Badzulzaman, Mariam Daruz. Asas Kebebasan Berkontrak dan Kaitannya dengan Perjanjian Baku (Standart). Artikel dalam Media Notariat Nomor 28-29 Tahun VIII. Ikatan Notaris Indonesia. Surabaya

Bandung: PT Citra Aditya Bakti.

Djumhana, Muhammad. 2006. Asas-asas Hukum Perbankan di Indonesia.

Gazali, Djoni S. Rachmadi Usman. 2010. Hukum Perbankan. Bandung: Sinar Grafika.

Harahap, M. Yahya. 1996. Segi-segi Hukum Perjanjian. Bandung: Alumni.

Hasan, Djuhaendah. 1996. Lembaga Jaminan Kebendaan Bagi Tanah dan Benda

Hernoko, Agus Yudha. 2010. Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial. Jakarta: Kencana Prenada Media Grup.

HS, H. Salim. 2006. Perkembangan Hukum Kontrak Diluar KUH Perdata. Jakarta: Raja Grafindo Persada.

Ibrahim, Johnny. 2011. Teori&Metodologi Penelitian Hukum Normatif. Malang: Bayumedia.

Khairandy, Ridwan. 2004. Iktikad Baik Dalam Kebebasan Berkontrak. PPS Fakultas Hukum Universitas Indonesia.

Lain Yang Melekat pada Tanah dalam Konsepsi Penerapan Asas Pemisahan Horizontal(Suatu Konsep dalam Menyongsong Lahirnya Lembaga Hak Tanggungan). Bandung: Citra Aditya Bakti.

Miru, Ahmadi. 2004. Hukum Perlindungan Konsumen. Jakarta: Raja Grafindo Persada.

Muhammad, Abdul Kadir. 1986. Hukum Perjanjian. Bandung: Alumni.

Nasution, Az. 2006. Hukum Perlindungan Konsumen (Suatu Pengantar). Jakarta: Diadit Media.

Pengusaha Mikro Sebagai Nasabah Potensial. Profil Pengusaha Mikro. Jakarta.

Pusat Bahasa Departemen Pendidikan Nasional. 2008. Kamus Besar Bahasa Indonesia. Jakarta: Balai Pustaka

Setiawan. 1987. Pokok-pokok Hukum Perikatan. Jakarta: Bina Cipta.

Sjahdeini, Sutan Remy. 1993. Kebebasan Berkontrak dan Perlindungan Yang Seimbang Bagi Para Pihak Dalam Perjanjian Kredit Bank di Indonesia(Buku I). Institut Bankir Indonesia. Jakarta.

Sjahdeini, Sutan Remy. 1993. Peranan Jaminan Kredit dan Agunan Kredit Menurut Undang-undang Perbankan. Makalah disampaikan pada Seminar Nasional tentang Eksistensi Agunan dan Permasalahannya dalam Perbankan. Surabaya.

Soekanto, Prof. Dr. Soerjono, Sri Mamudji, SH. MLL. 2002. Penelitian Hukum Normatif Suatu Tinjauan Singkat. Jakarta : PT Raja Grafindo Persada.
Subekti. 2002. Hukum Perjanjian. Jakarta: Intermasa.
Suharmoko. 2007. Hukum Perjanjian, Teori dan Analisa Kasus. Jakarta: Kencana Predana Media Group.
Tim Penelitian dan Pengembangan Biro Kredit Bank Indonesia. 2003. Pengembangan Hubugan Bank dengan Kelompok Swadaya Masyarakat (PHBK). Topik III
Tim Penyusun ELIPS. Kamus Hukum. Jakarta: Elips Project.
Tutik, Titik Triwulan. Pengantar Hukum Perdata di Indonesia. Jakarta: Prestasi Pustaka Grafika.
Wardoyo, CH. Gatot. 1992. Sekitar Kalusul-klausul Perjanjian Kredit Bank, Bank dan Manajemen.

Internet

Kasmadi, Tujuan dan Fungsi Kredit (online), http://www.hukumonline.com, diakses pada tanggal 25 Juli 2012.
Putra, Definisi, Fungsi, dan Peranan Bank Umum dalam Perekonomian (online), http://putracenter.net/2009/09/23/definisi-fungsi-dan-peran-bank-umum-dalam-perekonomian/. Diakses pada 19 September 2012.
Rachmadi, Jenis dan Kepemilikan Bank (online), http://www.eocommunity.com, diakses pada tanggal 12 Agustus 2012.
Teguh Wicaksono Saputra, Penerapan Asas Keseimbangan dan Asas Kebebasan Berkontrak dalam Putusan Pengadilan (online), http://lontar.ui.ac.id/, diakses pada 19 September 2012.
Wibowo Turandy, Asas-asas Perjanjian (online), http://www.jurnalhukum.com/asas- asas-perjanjian, diakses pada 19 September 2012.

Thesis, Paper and Journal

Adeline Wijaya. 2009. Perlindungan Hukum Terhadap Debitur Kredit Pemilikan Rumah Yang Dirugikan Akibat Kenaikan Suku Bunga. Skripsi tidak diterbitkan, Malang,Fakultas Hukum Universitas Brawijaya.
Kitab Undang-undang Hukum Perdata.
Undang-undang Nomor 8 Tahun 1999 Tentang Perlindungan Konsumen.
Undang-Undang Nomor 10 Tahun 1998 Tentang Perubahan atas Undang-Undang Nomor 7 Tahun 1992 Tentang Perbankan.
Undang-undang Nomor 20 Tahun 2008 tentang Usaha Mikro, Kecil dan Menengah